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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**WILLIAM J. REED,**

**Petitioner,**

**v.**

**THE SUPERIOR COURT OF  
SONOMA COUNTY,**

**Respondent;**

**DANIEL M. REED,**

**Real Party in Interest.**

**A149674**

**(Sonoma County  
Super. Ct. No. SPR82625)**

THE COURT:\*

Petitioner seeks writ relief from the denial of his motion for change of venue. We grant the petition by way of this memorandum opinion because “[t]he Courts of Appeal should dispose of causes that raise no substantial issues of law or fact by memorandum or other abbreviated form of opinion.” (Cal. Stds. Jud. Admin., § 8.1.)

Petitioner’s venue motion sought to transfer real party in interest’s petition to compel accounting (Prob. Code, §§ 4540, 4541, 4545) to the Contra Costa County Superior Court, the county of petitioner’s residence. The motion to change venue was brought pursuant to Probate Code section 4523 and Code of Civil Procedure section 395.

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\* Before Jones, P.J., Needham, J., and Bruiniers, J.

In its order denying petitioner's motion, respondent did not address the statutory venue issues raised, and instead denied the motion on waiver and consent grounds.

However, real party's opposition brief below did not assert waiver or consent as a legal basis for denying petitioner's venue motion. Although real party disagrees with this conclusion in the opposition brief he filed in this court, we are not persuaded.<sup>1</sup>

Additionally, real party asserts that petitioner's mention of consent in a declaration filed in support of the motion, and his brief reference to consent and waiver in his reply brief, sufficiently raised the grounds upon which respondent relied. This argument is disingenuous, since petitioner's summary statements denied that he consented to or waived venue in Sonoma County, petitioner was not responding to any claim in real party's opposition that he consented to or waived venue in Sonoma County, petitioner did not brief issues of waiver and consent so as to squarely present them for decision, and it would be illogical to conclude that, having filed the motion to change venue, petitioner nevertheless intended respondent to utilize these statements as a legal basis for denying the requested venue change.

Put simply, the issues of waiver and consent were not properly presented to respondent for decision, and the court erred in denying petitioner's venue motion on those grounds. Since respondent did not proceed in accordance with due process in

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<sup>1</sup> In this court, real party argues "... the opposition asserted that the underlying petition filed by [real party] may ultimately be heard in Sonoma County based on the directly related Estate proceeding of [petitioner's] Petition to Approve First and Final Account (as former executor) ("William's Estate Account") and the necessity of an accounting of [decedent's] assets to determine of [*sic*] the accuracy of William's Estate Account." But the possibility that the petition could be transferred *back* to Sonoma County does not resolve whether venue of that petition was proper in the first instance in Sonoma County—the issue petitioner's venue motion sought to resolve. Real party also points to certain factual statements in his superior court opposition about petitioner's appointment as executor of decedent's estate in Sonoma County, the decedent's permanent residence being in Sonoma County, and petitioner's appearance in three estate related matters pending in Sonoma County. However, real party does not contend, and it does not appear, that these factual statements were utilized to support an argument that venue should not be changed on grounds of waiver and/or consent.

deciding petitioner's venue motion, we will grant writ relief to compel it to do so.<sup>2</sup> (See *Bricker v. Superior Court* (2005) 133 Cal.App.4th 634, 639.)

In accordance with our prior notification to the parties that we might do so, we will direct issuance of a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) Petitioner's right to relief is obvious, and no useful purpose would be served by issuance of an alternative writ, further briefing and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1240-1244.)

Let a peremptory writ of mandate issue directing respondent superior court to vacate its October 5, 2016 order denying petitioner's motion to change venue, and to thereafter conduct further proceedings, consistent with due process principles, to (1) decide the issues briefed by the parties (e.g., whether venue must be changed to Contra Costa County under Probate Code section 4523 or Code of Civil Procedure section 395), (2) provide notice and an opportunity to be heard on the waiver and consent issues, if the court wishes to consider and/or resolve those issues in addition to the statutory venue issues, and (3) reconsider petitioner's request for sanctions, attorney fees and costs in rendering a new ruling on the venue motion.<sup>3</sup>

In the interests of justice and to prevent further delays, this decision shall be final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).) Petitioner is entitled to recover costs. (Cal. Rules of Court, rule 8.493(a)(1)(A).) The previously issued stay shall dissolve upon issuance of the remittitur. (Cal. Rules of Court, rules 8.272(b)-(d), 8.490(d).)

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<sup>2</sup> We decline petitioner's invitation to decide the venue issues in the first instance.

<sup>3</sup> We reject real party's suggestion that this court resolve any entitlement to fees and costs. Not only does real party fail to cite to authority supporting this course of action, we find it is more appropriate for respondent to reconsider these points when it conducts further proceedings on petitioner's motion.